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REPORT OF THE PRE-UNCTAD X SEMINAR ON THE ROLE OF COMPETITION POLICY FOR DEVELOPMENT IN GLOBALIZING WORLD MARKETS
(Geneva, 14-15 June 1999)

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Executive summary and highlight of the seminar

The Pre-UNCTAD X seminar focused on the interface between competition policy and development by organizing discussions around: (i) worldwide concentration of market power through mega-mergers, etc.; (ii) deregulation and privatization; (iii) transfer of technology and intellectual property rights; and (iv) the role of business and consumers to promote competition and development proved highly successful. It brought home the point that integration of developing countries into the world economy depends to a large extent on their ability to gain an equal opportunity to access technology, human and financial resources and export markets, which in turn depends on the ability to challenge anticompetitive practices and abusive conduct of firms with market power.

The discussions showed that, in addition to the measures to be taken at the national level, there is a strong case for exploring the merits of studying the implications for development of a possible multilateral framework on competition policy. This would allow developing countries to form an opinion on the merits of such a multilateral framework. The discussion also focused on consumer welfare and benefits arising from implementing effective competition law and policy. Participants were of the view that ways and means should be identified to set up a new forum to discuss consumer policy at UNCTAD, distinct from the IGE on Competition Law and Policy.

The seminar also addressed the issues of: (i) whether the direction given to the work programme meets the needs of member States, primarily developing countries; (ii) identifying research and policy issues requiring priority attention on the part of UNCTAD and the international community; (iii) assessing the capacity and institutional building needs of developing countries and economies in transition in the area of competition law and policy; (iv) on the basis of the above, formulating a list of proposals which could constitute the first step of reflection on a programme of work for the secretariat that could be adopted by UNCTAD X. In addition to the above policy issues, the highlights of the discussions which took place during this seminar are listed below:

(a) Since Midrand, the work of UNCTAD on competition law and policy has been broadened to cover a range of related development issues brought about by liberalization and globalization. This development was highly appreciated by member countries and most delegates felt that it should be continued;

(b) UNCTAD should increase support of developing and other countries in respect of capacity building in the field of competition law and policy, both at national and multilateral levels;

(c) To this end, work should cover specific areas, such as intellectual property rights (IPRs), parallel imports and exhaustion of intellectual property rights, in order to clarify the competition dimension of IPR negotiations, such as Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs) and other multilateral talks taking place at the World Trade Organization (WTO) and elsewhere;

(d) In order to increase transparency and access to information for developing countries, UNCTAD should publish annually a world report on competition law and policy;

(e) The creation of a competition culture is an essential component of the success of market-oriented reforms in developing countries and economies in transition; the positive role that consumer organizations and businesses themselves can play in this respect should be further explored at UNCTAD X; and ways and means of closer cooperation with United Nations Development Programme (UNDP) in this context should be developed;

(f) In view of the growing importance of competition and related development issues, the participants were of the view that UNCTAD's organizational structure should fully reflect the order of priority attached by member States to the work in this area.

I. INTRODUCTION

1. In order to provoke a debate on key competition issues that affect development, with a view to contributing towards building a consensus in this area of UNCTAD's work for consideration by UNCTAD X, the Secretary-General of UNCTAD convened a one-and-a-half-day seminar in Geneva, at the Palais des Nations, on 14 to 15 June 1999. This decision was approved by the President of the Trade and Development Board on 30 March 1999.

2. As decided by the Secretary-General, the seminar was divided into three sessions and a concluding panel. The first session, devoted to globalization competition and development, reviewed three issues of major importance for developing countries and economies in transition, namely: (i) foreign direct (FDI), mergers and alliances; (ii) deregulation, demonopolization and privatization; and (iii) intellectual property rights, competition and transfer of technology. The second session explored the possible role of the civil society (both consumer organizations and business representatives) in promoting competitive markets supportive of sustainable development. At the third session views were exchanged on the role of competition policy in providing a more equitable playing field for development in globalizing markets. Competition and trade policy issues linked to development were discussed, and views were expressed on a possible multilateral framework on competition. The final panel, consisting of key speakers and panellists, reviewed appropriate measures to address the specific needs of developing countries, including the least developed countries (LDCs), and economies in transition, in promoting a competition culture (at the national level) and in building a more equitable playing field (in global markets).

II. SUMMARY OF SUBSTANTIVE DISCUSSIONS

3. The Secretary-General of UNCTAD, in opening the seminar, noted that, despite the growing importance of competition and mergers in the world economy, developing countries' role in this area had so far been limited; few of them had effectively applied competition laws. With its specific development perspective, UNCTAD was trying to assist developing countries to adapt to global economic trends, including the establishment of the institutional framework necessary to enforce competition laws. Two key issues were: (i) how competition policy could be integrated into development strategies; and (ii) how UNCTAD, in cooperation with other international organizations, could best promote competition policy principles and demonstrate their relevance for development. After welcoming the participants, the Secretary-General commenced the first session of the seminar entitled Session I. Globalization, Competition and Development.

Session I. Globalization, Competition and Development

4. The first item addressed was "Foreign direct investment, mega-mergers and strategic alliances: is global competition accelerating development or heading towards world monopolies?" The speaker from the private sector expressed confidence that globalization and the integration of national and regional economies into the global economy would bring great benefits to all in the long term, while also recognizing the suspicions that globalization had

provoked. The focus should therefore be on practical issues of how to make globalization work for the benefit of all. He felt that the trend towards mega-mergers should be kept in perspective: they were mainly concentrated in a few sectors in developed countries, there had been a parallel trend towards divestment, and FDI continued to flow to developing countries, bringing important benefits for growth, technology transfer and consumer welfare. There was little risk of global monopolies. Most mergers had a neutral impact upon firms' performance, market dominance usually eroded rapidly when markets functioned effectively, and there was competition from substitute products and from local or regional competitors. But the regulation of markets by Governments lagged behind the reality of globalization. A level playing field would be created by greater transparency of, and consistency among, national competition systems, as well as international rules providing for the adoption of national competition laws, common approaches in this area and international cooperation which should safeguard business confidentiality.

5. Another speaker noted that global mergers had not so far had a significant impact in the Southern African region, there was little new FDI and only a few countries of the region had adopted competition laws. This called into question the relevance, for the time being, to the region of international competition rules. He drew attention to the manner in which privatization in the region was taking place without adequate competition safeguards.

6. Describing current trends relating to mergers and strategic alliances, a speaker from a consumer organization, reviewed the determinants of such trends and the motivations and effects of mergers. He warned that such trends were leading to concentration of wealth, and economic and market power, while not necessarily to greater efficiency. Appropriate competition regimes were therefore necessary at national as well as international levels.

7. In the discussion which followed, it was noted that competition policy and trade and investment liberalization were consistent and complementary, leading to market integration and a level playing field. However, while there were long-term benefits to market opening, there were also short-term costs. The ability of countries to take advantage of market opportunities depended upon levels of technological development, endowments and culture. The distribution of gains and losses was thus unequal among countries and over time. This led to tensions between economics (focused on the long-term benefits) and politics (focused on the short-term losses). Both competition policy (in respect of exemptions, exceptions and prosecutorial discretion) and trade policies (in respect of anti-dumping and safeguards) were therefore not always consistent with the ultimate goal of the opening of the market. It was incorrect to consider that competition policy instruments were "purer" than trade instruments.

8. The resistance of some developing countries to the adoption and implementation of competition policy was due to the weight given to the short-term costs rather than the long-term benefits. This concern needed to be addressed. There was evidence that developing countries' markets were affected by international cartels, abuses of dominance and mergers, and that the adoption and effective enforcement of national competition laws would help to control or deter anticompetitive practices emanating from abroad.

9. National action was insufficient and needed to be complemented by international cooperation. Voluntary international cooperation would not suffice because: (a) it gave no incentive to developing countries to adopt competition regimes; (b) as the decision to enter into cooperation agreements was left to the initiative of each country, countries with advanced competition regimes would see no benefit from entering into cooperation with countries without competition regimes, or with regimes considered inadequate; (c) cooperation on individual cases would only occur where interests converged, such as in the case where import cartels blocked market access. A multilateral framework involving commitments to adopt and effectively enforce competition laws and to cooperate in respect of problems arising in the interface between competition and trade was therefore necessary. The General Agreement on Trade in Services (GATS) and the TRIPs Agreements (in respect of standards for enforcement) were useful models for this purpose. As the recent cases brought to the WTO dispute settlement body demonstrated, problems might arise in respect of substantive standards and dispute settlement. Any minimum standards adopted should be flexible and progressive. Competition policies were adopted and implemented within the context of specific national environments, and differences among them were legitimate. Common approaches might be adopted. A balance should be sought between commitment and flexibility. Another approach was to make the provisions of trade agreements more consumer and competition oriented.

10. The second item at the first session addressed the following question: "Deregulation, demonopolization and privatization: how to ensure consistency with competition?".

11. A speaker noted that competition law and policy were an important part of the institutional and regulatory framework needed for countries to be able to address today's challenges. In this connection, it was important for each country to consider reforms in light of its own environment. Competition policy contributed to the efficiency, development and equity of an economy seeking to offset two main forces that work against these goals - monopoly power and inefficient government regulation. The recent financial crisis in Asia and elsewhere provided a useful lens through which to examine the role of competition policy, as competition in crisis economies was sometimes hindered by various measures and restrictions. The enactment of a competition law was also considered to be an important element of regulatory reform and a matter of economic self-defence, especially taking account of the evidence that international cartels operate in ways particularly harmful to developing countries.

12. There were a number of economic reasons and political benefits of privatization and demonopolization was one of its central goals. Regulatory reforms, privatization and demonopolization policies needed to be implemented with careful attention to the underlying goals of using market forces to yield beneficial results. The most important thing a country could do to assure the pro-competitive potential of its economy and its regulatory regime consisted of having a sound competition law, enforced by a strong competition authority. These authorities needed to cooperate in their competition law enforcement work to deal with restrictions that have cross-border effects. Increased globalization and a higher percentage of competition cases with a significant international component require increased international cooperation in the

design and implementation of competition law and policies. This could be achieved at different levels and under different forms including voluntary cooperation among competition agencies, voluntary convergence in competition laws and enforcement practices, as well as development of a multilateral agreement - an issue of growing attention in the context of preparations for the WTO Ministerial meeting.

13. Another speaker stressed that deregulation, demonopolization and privatization were inseparable and major parts of economic reforms carried out in many countries and that there were no common mechanisms for ensuring a link among various elements of these reforms. Deregulation, demonopolization and privatization were treated in his country simultaneously, while the reforms affected practically all enterprises which, as a result, were put under the pressure of competition. This was favoured by the establishment of a mechanism of interaction between the competition authority and other State bodies. It was necessary to elaborate various elements for such interaction, namely the agreed purposes of activities; joint programmes of action; and mechanisms to resolve conflicts. In his view, combining functions in support of competition with those regulating specific industries in a single body would be a mistake because of the fact that the activities of a competition authority consisted of the protection of a competitive market mechanism, while regulation provided for substitution of a market mechanism by means of decisions taken by a State body. The relevant State body would not be able to assess objectively its activities from the point of view of competition.

14. Describing his country's experience in privatization, a speaker stressed the need for transparency, speed and public awareness, while political interference in the privatization programme should not be permitted and perpetuation of monopolies should be avoided by opening up to competition and restructuring large enterprises. He referred to a Privatization Trust Fund which had been set up to achieve wider local ownership by enabling the largest number of citizens to participate in the privatization process. The economic benefits of privatization consisted of improving enterprise efficiency and performance; developing competitive industry; accessing capital, know-how and markets; achieving effective corporate governance; developing well-functioning capital markets; and securing an optional sale price. These factors determine the institutional framework and approach of the privatization programme, while political transparency strengthens support for it.

15. One participant pointed to the importance for the competition authority to play a role in the privatization process. Referring to the experience of his country, he said that in the absence of such a role, privatization had resulted in the creation of monopolies in several sectors of the economy. Regulatory bodies are needed in the process of privatization, but the lack of their connection to competition authorities and the absence of merger control could result in the absence of competitive environment. Another participant stressed the importance of keeping markets open and competitive in order to avoid crises. Referring to his country, he noted that the behaviour of monopolies had contributed largely to the recent crisis. In this respect, his Government had taken measures to promote competition and encourage foreign investors, who, however, preferred to create strategic alliances among themselves rather than to enter into new areas altogether. Having a strong connection between competition authorities and regulatory bodies, while

maintaining independence of the former was essential. Another participant also stressed the critical role of pro-competition educational programmes, especially those provided by technical assistance, and their role in the creation of a competition culture. He pointed to the role of his country's competition authority which had an opportunity to influence the design of privatization and deregulation programmes.

16. The third item to be discussed at session I was: "Competition, IPRs and transfer of technology."

17. A speaker pointed out that the basic problem related to transfer of technology stemmed from the fact that innovation was a costly and a risky exercise for the innovating firm and that, therefore, it was necessary to provide intellectual protection (be it factual or legal) if innovation was to be fostered. Technology transfer, he added, meant that the temporary monopoly (or quasi-monopoly) secured by the innovating firm would be shared with competitors. Consequently, for such a transfer to be agreeable to the innovating firm, the innovator needed to be able to keep the transferee at some distance and to maintain its control over the technology as a source of extra income. The interests of the transferee were in the opposite direction, namely to secure technology by keeping to the minimum the constraints imposed on him to use such technology and profit therefrom. Rather than being conceived of as a barrier to trade and competition, IPRs were looked upon, particularly since the 1980s, as a means of enhancing competitiveness. Lack of adequate protection was then considered to be an obstacle to fair trade and a distortion of competition. He warned, however, that the technology transfer dilemma had not faded away. He recalled that TRIPs itself recognized the existence of the problem by providing that the Agreement should not stand in the way of measures to prevent the abuse of intellectual property rights. The reach of relevant provisions of TRIPs, however, remained unclear and their practical application uncertain at best. The speaker then asked whether TRIPs provided a suitable framework for the transfer of technology, as he asserted that it did not establish an international framework for the same. Under TRIPs, it was for Governments to define what relevant measures ought to be taken, albeit consistent with TRIPs and in coordination with member States. Article 40 of TRIPs required member States to tolerate the competition policies of other member States. Within this framework, intellectual property was not supposed to be dealt with in a manner different from that in which other types of property are addressed by competition law. The rationale for intellectual property thus is not protection, but rather the promotion of competition in an efficient manner. TRIPs, however, leaves out of its scope most of the problems arising from technology transfer. Such transfer is connected with foreign direct investment, R & D cooperation, joint ventures, strategic alliances, matters which are not covered by article 40 of TRIPs. In concluding, he stressed that his analysis should not be construed as reducing the importance of intellectual property, but rather as an attempt to place intellectual property in an appropriate perspective. Intellectual property law, in his view, was subject fully to general antitrust principles. Therefore, antitrust control must apply to restraints related to intellectual property as much as it applies to any other type of restraint.

18. Another speaker discussed the issue of parallel imports and territorial exclusivity. He addressed the question of whether or not parallel imports were advantageous for developing countries. He recalled that enterprises based in developing countries were often licensees and recipients of intellectual property. These countries had a competitive advantage to produce and export a wide array of exports. They, however, were often not allowed to enter world markets as such a move would reduce the profitability of licensors. Parallel imports tended to enable developing countries to secure goods from sources other than the established licensee. They thus tended to be advantageous for developing countries that were not producers of the goods in question, as they could obtain such goods from sources cheaper than the licensee who had secured the territorial exclusivity contract, but not for the developing countries that could produce such goods.

19. Another speaker stressed the importance of examining the links between intellectual property and competition from the perspective of a developing country and recalled the evolution of thinking that had taken place in developing countries in this connection. Today, he asserted, it is widely accepted that intellectual property is an important means of promoting competition. Intellectual property entails the recognition of the efforts and costs involved in the development of technology. The promotion of intellectual property, therefore, can be a means of promoting development since jobs and competition among trademarks and service providers are thereby created. Copyrights can foster economic activity, particularly in the field of publishing and advertising. He further asserted that international and regional exhaustion of intellectual property tends to promote merchandise trade and, as a result, facilitates globalization.

20. In the discussion that followed, it was stressed that developing countries and economies in transition needed to enact provisions aimed at promoting international standards. It was added that standards are a complement of, rather than a substitute for, patents. Countries were urged not to mix different policies (e.g. competition and intellectual property policies), as the aims of these policies differ. Another participant also stressed the importance of ensuring a free exchange of technology-related data.

Session II. The role of business and consumers in promoting competitive markets supportive of sustainable development

21. The first item discussed here was: "ensuring consumer benefits from competition in globalizing markets and creating a competition culture supportive of development".

22. Introducing the nexus between competition and consumer welfare, a speaker recalled the eight principles enchained in the United Nations Guidelines on Consumer Protection adopted in 1985, and stated that consumer policy should figure clearly in UNCTAD's programme of work. Consumer rights were defended more explicitly in consumer protection legislation, which should go hand in hand with competition law. In particular, special attention needed to be paid to the poor and vulnerable segments of the society. Also equitable access for small producers to export markets was essential for sustainable

development in developing countries, and such markets should not be limited to transnational corporations (TNCs). Such concerns were not the object of competition laws and, hence, there was need to develop, alongside competition policy, a genuine consumer policy including the adoption, where necessary, of consumer protection laws. All speakers under this item of the agenda stated that the role of mobilizing consumer groups and raising awareness among the civil society including, in particular, through educating the society as a whole in the creation of a culture of competition should be a priority for policy makers. The view was expressed that UNCTAD's work on developmental issues should reflect the Eight Principles of the United Nations Guidelines, which should also have a bearing on the work at the WTO.

23. In the discussion that followed, it was proposed that the promotion of consumer rights should be made an integral part of UNCTAD's work. To this end, it was suggested that a "competition culture and consumer protection agenda" be adopted by UNCTAD X with a view to accelerating the following essential objectives:

(a) Capacity building, human resources and expertise development in the field of competition policy;

(b) Solid analysis and research to evaluate the benefits of competition policy for consumers, in order to promote regulation in both competition and consumer areas;

(c) Taking into account the nature of the problems at hand and analysing the consequences of not addressing effectively anticompetitive practices on industry performance and consumer welfare in developing countries and economies in transition;

(d) Educating and informing consumers about the benefits of competition policy and consumer rights in order to create an effective competition culture in all sectors of society.

24. The second item of session II was addressed more to the business community to discuss: "how business could generate wealth and development without stifling competition in emerging markets". One view was that this could not be done in a vacuum, but needed to be coordinated with other policies, including consumer regulations, regulatory reform, including deregulation and privatization, etc. It was also essential, when adopting competition rules, to revise existing rules which might contradict the objectives of competition principles, in order to avoid turf wars with other parts of the administration. The debate then focused on how to introduce an effective competition policy that is supportive of development and ensuring consumer benefits from competition in globalizing markets. The view was expressed that consumer protection issues should not hijack competition policy objectives, which were aimed at increasing efficiency and promoting competition. One speaker stated that competition policy should be based on four principles: transparency; non-discrimination; minimal bureaucracy; and flexibility. In addition, it was necessary to keep costs of compliance at reasonable levels in order not to stifle business activity for the sake of competition and consumer principles. Concern was also expressed about the confusion between unfair competition and free competition. Some country

experiences emphasized a dual track based on a case-by-case analysis rather than outright prohibition which is still the case in other countries. The discussion also evolved around the question of whether consumers should be protected by the same agency as the competition authorities, or under different departments. Different existing systems were described, and the prevalent view seemed to be that since competition policy objectives and consumer welfare were not identical, the two issues should essentially be administered by two independent agencies, regulating distinct laws.

25. The discussion concluded on the need to raise the profile of regulatory agencies to defend consumer interests. The essential issue was the political commitment and the resources devoted to promote competition and consumer welfare. This also raised cross-border cooperation issues, and coordinated action by Governments, international organizations and civil society. UNCTAD X could be instrumental in this regard by launching an initiative to promote a competition culture supportive of consumer welfare. Delegations might be interested in establishing an expert group on consumer policy, as a distinct body from the Intergovernmental Group of Experts on Competition Law and Policy, to promote consumer interests in compliance with the 1985 United Nations Guidelines, as an integral part of UNCTAD's programme of work.

Session III. The role of competition policy in providing a more equitable playing field for development in globalizing markets: a challenge for Governments and multilateral organizations

26. One speaker noted that in the past governments relied on State intervention to regulate their economies, including industrial policy. In recent years the introduction of competition has led to significant decreases in costs and prices, and increase in the diversity and quality of services offered to consumers. This trend had undeniably accelerated economic growth, and to the extent that such progress is also achieved in developing countries and economies in transition, it has also accelerated the development of these economies. Noting that according to eminent economists, industrial policy can be successful in the initial stage of development, but can become a clumsy instrument for promoting complex or high-tech industries at a later stage of economic development. As economic development proceeds, and as products from technologically sophisticated industries become more and more important for the growth of all developed economies, there is a general movement away from government intervention towards free market mechanisms.

27. He also noted that government interference in market mechanisms distorting competition, often under the pressure of business lobby groups, had adverse effects on consumer welfare, and this increasingly resulted in being unfair and antidemocratic.

28. After reviewing a number of cases such as international cartels and other anticompetitive behaviour affecting international markets, he drew a number of lessons. First, such trade-distorting or trade-restraining practices did exist in a number of important sectors and were likely to have a significant negative impact on the economic development of both developed and developing countries. Secondly, international cartels were likely in certain circumstances to undertake dumping activities in countries outside the scope

of the cartel territories, justifying in turn the desire of the latter countries to protect their national industries by applying anti-dumping rules. In turn, such anti-dumping action could sometimes be used in ways that restrain trade and competition even in cases where dumping was not associated with a restraint of competition in the exporting country. Thirdly, it was clear that the effective use of national competition rules acted as a deterrent to international cartels, which chose to operate elsewhere, and that such rules enabled authorities of countries, where the adverse effects of international cartels are felt, to successfully prosecute the firms involved; in this last case, bilateral cooperation involving the application of positive comity (i.e. action by a country against a restraint of competition by its own firms affecting the territory of another country). It was felt, however, that some countries were reluctant to adopt competition laws because, while giving it the means to curb the abuses of foreign firms on its own territory, the country in question committed itself to enforcing this law against anticompetitive practices emanating from its own domestic firms. Such course of action may be at odds with the desire of the country to promote economic growth through industrial policy measures designed to foster concentration on the domestic market (whether through mergers or through cartel-like cooperation among local firms) and to shelter its national champions from competition. However, it was felt that countries that had based their economic development on export-led growth had come under increasing pressure from their trading partners to adopt and reinforce their competition laws. Absent of such measures, these countries were becoming primary targets of anti-dumping measures. The example of the European Community was cited to note that thanks to the vigorous enforcement of the competition rules within the European Union (EU), member States were able to abandon the use of anti-dumping measures among them.

29. Discussion at this session then turned to international cooperation in the enforcement of competition laws, bilateral cooperation, involving the use of positive and negative comity, as well as the pros and cons of multilateral rules on competition. In this connection, after citing different cases where difficulties are raised by the limited jurisdiction of national competition agencies, the first speaker stated that the success of the GATT/WTO negotiations over the past two decades bears testimony to the fact that there is wider agreement that market forces can play a useful role in international trade towards promoting economic development. Hence, addressing the issue of competition rules both at national and international levels was a natural follow-up and a necessary complement to past achievements in the area of trade liberalization and deregulation. Another speaker noted that competition rules, with their non-discriminatory focus on consumer welfare, equal individual rights and access to courts, were more equitable (in terms of constitutional law and welfare economics) than many trade policy rules, which usually have a producer bias, power-oriented procedures, etc. He stated that without competition rules, governments could not maximize consumer welfare, and consumers risked being exploited by private anticompetitive practices as well as by governmental protectionism.

30. Turning to the level of international trade, he then noted that if one wanted to promote non-discriminatory conditions across borders, competition

policy should be defined broadly so that national rules would stop exempting export cartels and "regulated industries", and trade authorities should stop restricting and distorting import and export competition.

31. To this end, competition-oriented reforms of the WTO trading system were necessary for rendering both trade and competition policies more coherent and, thereby, enhancing economic freedom, non-discriminatory conditions of competition, and promoting consumer welfare both within and among countries. He noted that in Europe, most countries had introduced national competition laws only after they had previously accepted international (e.g. EC or free-trade agreements concluded with the EC or EU) competition rules. He therefore considered the EC proposal for negotiating new WTO "minimum standards" for competition rules to offer important advantages. He concluded that in his opinion, the United States preference for unilateralism and bilateralism was due to its unique situation, but that it was not convincing because in competition policy as in trade policy, multilateralism was more rule oriented and evidently more efficient than bilateralism or unilateralism.

32. Another speaker recalled that the central challenge for public policy in the twenty-first century was to ensure that globalization remains sustainable from all perspectives. He noted that public policy could only succeed in this task if societies accepted to delegate some aspects of policy-making to organizations outside the public arena, such as businesses, non-governmental organizations (NGOs) and other interested non-State parties which had a direct stake in the outcome of global public policy. While there was a tendency to perceive globalization as something irreversible, he warned this was not the case. Therefore, now was the time to take proper action to establish global public-policy networks that would ensure the right policy mix at the turn of the century.

Concluding Panel

Appropriate measures to address the specific needs of developing countries and LDCs in promoting a competition culture and in building a more equitable playing field in global markets

33. A speaker in this panel stressed that current trends towards globalization, liberalization and deregulation were a reality on which international discussion and policy action needed to be based. A new economic order was emerging, an order in which transnational corporations had increased power and increased weight, a phenomenon which, he added, had profound implications regarding industrial location, price determination, international specialization and technology transfer. The competitiveness of the different countries were bound to be affected by these trends, and the degree of autonomy of governments in their conduct of national policy, and even the extent to which regional and international negotiations could influence events, were likely to be constrained. Instead of trying to oppose this reality, he argued, what was needed was to seek ways and means of safeguarding and promoting the interests of developing countries by seizing opportunities and limiting costs. The importance of competition policy for developing countries had grown over time as a result of the above-mentioned realities, but much needed to be done in terms of clarifying the implications and effects

of such policies. UNCTAD, with its long-standing experience in competition law and policy and with its development vocation, had a salient role to play. He identified four areas in which UNCTAD could focus its work:

(a) Periodic analysis should be carried out with regard to the implications for competition of current world economic trends, of the role of transnational corporations and, of the evolution of markets, as well as with regard to how the competition culture was evolving;

(b) UNCTAD could be a forum of debate aimed at preparing for the eventual negotiation of a multilateral competition framework profitable to developing countries;

(c) UNCTAD should continue to provide technical cooperation on competition policies; and

(d) UNCTAD should monitor action taken in other international forums in the field of competition policies.

34. In support of the above, another panelist argued that UNCTAD's work on competition should be elevated to the level of a programme in itself, as was the case in the Organization for Economic Cooperation and Development (OECD) as well as in UNCTAD's work on investment. He drew attention in particular to the following problems which affected significantly developing countries and required action at the international level:

(a) Collusion in essential services (in particular air and maritime transport);

(b) Anticompetitive practices in the field of tourism resulting from global alliances;

(c) Collusive agreements among transnational corporations which affected developing countries and which could not be redressed by mere action at the national level;

(d) Undue protection of pharmaceutical products of foreign firms by recourse to patents whose legitimacy (in terms of novelty and period of protection) was questionable and which constituted a hindrance to the exercise of the right to health care for the people of the region;

(e) Defamation practices against developing country firms through false accusations of non-compliance with international rules;

(f) Anticompetitive effects of the implementation of TRIPs, effects which were contrary to the stated aims of TRIPs and the existence of which justified exploring the possibility of a multilateral framework on competition policy.

35. He thus called upon UNCTAD to produce regularly an annual report on competition policies and practices, akin to the World Investment Report prepared by the Investment Division of UNCTAD.

36. Another panelist drew attention to the need to promote a competition culture at international and national levels, particularly in less developed countries having no competition law and policy. In many of these countries, privatization was taking place and appropriate bodies were set up, which should take due account of competition in their activities. Similarly, possibilities to promote greater competition in specific sectors should also be explored and a dialogue between consumers and investors should be promoted. International agencies could give special attention in their technical assistance programmes to countries having no competition law and policy, including by means of exchanging experiences with countries having such laws and policies.

37. Another panelist argued that bilateral agreements in the field of competition should be fostered as an increased number of such agreements would pave the way for broader, plurilateral and multilateral agreements. He felt that it would be premature to try to devise a binding multilateral framework on competition policy. What could realistically be attempted, he added, was to establish a general framework with basic principles that should govern the institution of bilateral agreements. He further stressed the complementary nature of the work being done in this area by WTO, OECD and UNCTAD and, as a result, emphasized the importance of a cooperative scheme between these organizations.

38. Another panelist suggested that draft papers for UNCTAD X should study the issue of launching multilateral negotiations on competition and pointed to the need to take into account the interests of countries which were so far non-members of WTO.

39. Another panelist suggested that UNCTAD should contribute to the promotion of a competition culture by the following: supporting the elaboration of competition laws and policies in developing countries; helping resolve the problem of financing competition authorities in developing countries; promoting the exchange of information on competition at the international level; and establishing a permanent training framework on competition, including the possible setting up of a training centre.

40. The last panelist drew attention to the importance of consumer protection policies as a vital part of any successful development policy. The link between development policy and consumer protection, he added, was duly recognized by the European Union. A similar recognition deserved to be made at a broader international level, which could eventually lead to the establishment of an international consumer protection agency. He expressed the hope that UNCTAD X could consider and adopt policies in the field of consumer protection with a view, in particular, to promoting international cooperation and developing an institutional framework in this area, as well as to assisting national consumer associations as a means of fostering the development of a competition culture.

41. In closing the seminar, Mr. Ricupero, Secretary-General of UNCTAD, pointed out that the seminar fully met the expectations that had been placed upon it and had reached three critical conclusions:

(a) It became evident at the seminar why competition policy and consumer protection were decisive components of development and why relevant international organizations, including UNCTAD, needed to address these issues as critical elements of human sustainable development;

(b) It was necessary not only to promote legislation and multilateral norms in these areas, but also to look at the institutional aspects thereof;

(c) No single organization could take on itself the huge task of tackling all the aspects related to competition policy and consumer protection. What was necessary, he stressed, was a trilateral network which would involve governments, the business community and the civil society, including international organizations. This network, he asserted, was indispensable for the successful promotion of a competition and consumer protection culture.

ANNEX I

PRE-UNCTAD X SEMINAR ON THE ROLE OF COMPETITION POLICY FOR DEVELOPMENT IN GLOBALIZING WORLD MARKETS
(14-15 June 1999)

14 June 1999

09.30-09.45 Opening: Mr. R. Ricupero, Secretary-General of UNCTAD

Session I **Globalization, Competition and Development**

09.45-10.45 FDI, mega-mergers and strategic alliances: is global competition accelerating development or heading towards world monopolies?

Panelists: Mr. A. Van Heemstra (UNILEVER)
Hon. M. Adam (Zimbabwe)
Mr. P. Mehta (CUTS, India)

Discussion

10.45-11.00 Coffee break

11.00-12.00 Deregulation, demonopolization and privatization: how to ensure consistency with competition?

Panelists: Ms. J. Shelton (OECD)
Mr. O. Zavada (Ukraine)
Mr. G.K. Lipimile (Zambia)

Discussion

12.00-13.00 Competition, IPRs and transfer of technology

Panelists: Prof. H. Ullrich (München Universität, Germany)
Prof. F. Abbott (United States)
Prof. L. Diez-Canseco (Peru)

Discussion

13.00-15.00 Lunch

Session II

The role of business and consumers in promoting competitive markets supportive of sustainable development

15.00-16.00 1. Ensuring consumer benefits from competition in globalizing markets and creating a competition culture supportive of development

Panelists: Mr. J. Edwards
(D-G, Consumers International)
Mr. P. Evans (United Kingdom)
Ms. G. Foster (CARICOM)

16.00-16.15 Coffee break

16.15-17.15 2. How can the business community generate wealth and development without stifling competition in emerging markets?

Panelists: Mr. D. Busby (CEFIC)
Ms. M. Del Carmen Riego (Mexico)
Mr. P. Plompen (ICC)

17.15-18.00 General discussion

15 June 1999

Session III

The role of competition policy in providing a more equitable playing field for development in globalizing markets: A challenge for governments and multilateral organizations

09.30-11.00 **Speakers:** Mr. F. Jenny (France)
Prof. Petersmann (WTO)
Prof. Matsushita (Japan)

11.00-11.30 Trilateral networks of governements, business, and the civil society: The role for international organizations in global public policy

Mr. W. Reinicke (World Bank)

11.30-11.45 Coffee break

Summary and conclusions

Appropriate measures to address the specific needs of developing countries and LDCs in promoting a competition culture and in building a more equitable playing field in global markets

11.45-13.00

Panel: Chair: Mr. R. Ricupero

Panelists: Mr. W. Reinicke
Mr. F. Jenny
Amb. Perez del Castillo
Amb. Benjelloun
Amb. F. Cuello
Prof. Matsushita
Prof. Petersmann
Prof. H. Ullrich
Prof. F. Abbott
Mr. D. Busby
Mr. J. Edwards

Roundup and policy recommendations for UNCTAD X: Consensus-building in the preparatory process leading to the Conference

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